

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A :

JUDGE, NO. 01-244 :
2670

CASE NO.: SC01-

(Judge Charles W. Cope) :

_____:

MOTION FOR PROTECTIVE ORDER

The Honorable Charles W. Cope, through the undersigned counsel, respectfully request this Commission, pursuant to Rule 1.280(c), Fla. Civ. Pro., to enter a protective order preventing the Special Counsel's abuse of discovery in this action, and in support thereof, state the following:

1. Special Counsel, on the afternoon of June 7, 2002, noticed the deposition of William Dearborn for Monday, June 17, 2002 at the offices of the State Attorney in Naples, Florida.

2. William Dearborn is believed to be a police officer who will testify as to some circumstances related to an arrest of Judge Cope in 1996 for driving while under the influence.¹ The charges against Judge Cope were ultimately dismissed for lack of probable cause after it was determined by the court that the arresting officer had misrepresented certain material facts.

¹The undersigned has made numerous attempts to contact Special Counsel so as to inquire his basis for noticing the deposition of William Dearborn but has not been successful in such efforts.

3. The circumstances concerning the arrest that occurred six (6) years ago and for which William Dearborn would have any arguable knowledge have absolutely no relation to the issues before the Commission that are to be tried on June 24, 2002. Rather, the deposition of William Dearborn appears to have been noticed in bad faith so as to harass Judge Cope and unnecessarily raise the cost of Judge Cope's defense to the scurrilous charges leveled against him.

4. The deposition of William Dearborn is not reasonably calculated to lead to the discovery of admissible evidence. The charges set forth in the Amended Notice of Formal Proceedings have absolutely no relevance to an arrest that occurred six (6) years prior on charges that were ultimately dismissed for lack of probable cause. For example, it is uncontested that Judge Cope is not charged with driving under the influence in the disciplinary proceedings before the Commission. Furthermore, Judge Cope has readily admitted throughout these proceedings that he was intoxicated at the time of the alleged conduct upon which the disciplinary charges are based. Moreover, Special Counsel has known of the six year old arrest since, at the latest, the filing of the formal proceedings against Judge Cope. Special Counsel, in implicit acknowledgement of the lack of relevancy of the 1996 arrest to these proceedings has never listed William Dearborn as a witness to be called by the JQC, or has otherwise indicated that such person was believed to have

any knowledge relating to the disciplinary charges filed against Judge Cope. Accordingly, the deposition of William Dearborn noticed by Special Counsel constitutes an abuse of the discovery process and is obviously done in bad faith for the sole purposes of harassing Judge Cope and so as to unnecessarily raise the cost of Judge Cope's defense to the disciplinary charges leveled against him.

5. The law is well-settled that a protective order should be granted when the pleadings indicate that the discovery requested is not related to any pending claim or defense and is not reasonably calculated to lead to the discovery of admissible evidence. Richard Mulholland & Associates v. Polverari, 698 So.2d 1269 (Fla. 2nd DCA 1997); Walter v. Page, 638 So.2d 1030, 1031 (Fla. 2nd DCA 1994); see Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co., 629 So.2d 852, 854 (Fla. 1st DCA 1994) (noting that it is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all the pleadings). In the instant case, the deposition of William Dearborn is not related to any pending claim or defense, nor is the information that he may assert to have relating to an alleged incident occurring six (6) years ago in anyway reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this Commission should enter the requested protective order.

WHEREFORE, pursuant to Rule 1.280(c), this Commission should enter a protective order prohibiting Special Counsel from proceeding with the deposition of William Dearborn noticed for Monday, June 17, 2002 at the State Attorney's Office in Naples, Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Protective Order, has been furnished, on this ____ day of June, 2002, via Facsimile Transmission and by U.S. Mail, postage prepaid, to the following persons:

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